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Municipal Corporations-Negotiable Instruments-Estoppel

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MUNICIPAL CORPORATIONS—NEGOTIABLE INSTRUMENTS—ESTOPPEL — An incorporated town purchased fire equipment from X company. This was unquestionably within its powers.[1] As payment for said apparatus, four promissory notes bearing interest at the rate of six per cent per annum were given by the town to X company. Said notes were transferred to the appellant in due course, for a valuable consideration, and before maturity. The appellant later sought to enforce collection of two of said notes alleged to be due and unpaid.

The appellee town demurred to the complaint on the ground that it did not appear therein that the state board of tax commissioners had approved the issuance and execution by the appellee of the notes sued upon. Appellee relied upon a statute providing among other things that: "All bonds or other evidences of indebtedness hereafter issued or sold by any municipal corporation of this state may bear interest not to exceed six per cent per annum provided that the state board of tax commissioners shall approve all such issues where rate of interest is in excess of five per cent."[2] The demurrer was sustained by the trial court and judgment was rendered for appellee thereon when appellant elected to stand upon its complaint. *Held,* judgment affirmed. Failure to obtain such approval renders the notes void.[3]

The case exhibits with exacting clarity the burdens upon one who accepts such evidence of indebtedness of a municipal corporation. The instrument shows on its face that it has been issued by a municipality. This alone charges the holder thereof with notice of statutory requirements that are prerequisite to a valid issue of the obligation.[4] To make his position secure, he must convince himself prior to accepting the instrument that all such requirements for a valid issuing thereof have been satisfied. It obviously follows in view of these facts that if action is brought on the note or bond, the complaint must allege that the instrument was issued in the manner prescribed by law, or said complaint is subject to demurrer.

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[1] *In re Perpall,* 271 F. 466, 46 A. B. R. 302; *Johnson v. Collier,* 222 U. S. 538, 56 L. Ed. 306, 32 Sup. Ct. 104, 27 A. B. R. 454; *Matter of Mertens,* 142 Fed. 445, 73 C. C. A. 561; *In re J. W. Lavery & Son,* 235 Fed. 910, 37 A. B. R. 606; *Gordon v. Mech. & Grodus Ins. Co.,* 45 So. 384, 22 A. B. R. 649.

[2] *Everett v. Hudson,* 228 U. S. 474, 57 L. Ed. 927.

[1] Burns' Ann. St. 1926, sec. 11277, subdiv. 3.

[2] Burns' Ann. St. 1926, sec. 14240, par. 2.

[3] *Citizens' Bank of Anderson v. Town of Burnettsville,* 179 N. E. 724, Appellate Court of Indiana, Feb. 18, 1932.

[4] *Oppenheimer v. Greencastle School Twp.* (1905), 164 Ind. 99, 72 N. E. 1100.

The principal case is quite analogous to *Oppenheimer v. Greencastle School Township*,[5] wherein an assignee of a township warrant sued the said township thereon.[6] The complaint did not allege that the debt was contracted in accordance with certain statutory requirements "concerning township business." It was held that the complaint was defective even though it did allege that the plaintiff purchased the warrant for value, before maturity, and without actual notice of non-compliance with the aforesaid requirements. The court declared that if the debt was not contracted in the required manner, "as must be presumed against the pleader, the contract was absolutely void."[7]

The basis of the result is the fact that municipal corporations possess only delegated and limited powers. Their power and duties consist only of those expressly prescribed by statute and those that are necessarily or reasonably implied for the accomplishment of the purpose of their creation.[8] Likewise the statutory mode of exercising such powers must be followed.[9] "Where the charter or statute under which the municipal corporation is created, or other legislative act applicable, directs in precise or definite terms the manner in which certain corporate acts are to be executed * * * such specification must be substantially followed."[10]

The justification of the statute here in question is obvious. Increased indebtedness at high rates of interest necessarily will increase the expenses of municipal administration. These increased expenses will inevitably demand higher taxes. Therefore, the board of tax commissioners are given the power to supervise and regulate the issue of evidence of indebtedness at high rates of interest. The court correctly held the provision to be mandatory.

Estoppel does not apply to this situation. The act of the city was unauthorized by law, and was consequently void. No estoppel can arise from a void contract of this nature.[11] As stated in *Eastern Illinois State Normal School v. Charleston*,[12] "everyone is presumed to know the extent of the powers of a municipal corporation, and it cannot be estopped to aver its incapacity, which would amount to conferring power to do unauthorized acts simply because it has done them and received the consideration stipulated for."

It has been held, however, that these principles are to be limited to cases involving statutory provisions, as distinguished from those wherein mere ordinances of the municipality are in question. In *Citizens' Savings*

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[5] *Supra*, note 4.

[6] The statute involved in the principal case likewise applies to townships and counties. Burns' Ann. St. 1926, sec. 14244.

[7] Cf. *Van Hess v. Bd. of Comrs. of St. Joseph County* (1921), 190 Ind. 347, 129 N. E. 305.

[8] *East Chicago Co. v. City of East Chicago*, (1909) 171 Ind. 654, 87 N. E. 12.

[9] *City of Indianapolis v. College Park Land Co.*, (1918) 187 Ind. 541, 118 N. E. 356; *Campbell v. Brackett*, (1910) 45 Ind. App. 293, 90 N. E. 777; *Cooper v. Town of Middletown*, (1914) 56 Ind. App. 374, 105 N. E. 393.

[10] McQuillin, Muncie Corp. (2nd Ed.), sec. 386.

[11] *Eddy Valve Co. v. Crown Point*, (1906) 166 Ind. 613, 76 N. E. 536; *Pettis v. Johnson*, 56 Ind. 139; *Mattox v. Hightshue*, 39 Ind. 95.

[12] 271 Ill. 602, 111 N. E. 573, L. R. A. 1916D, 991.

Bank v. City of Newburyport,[13] the defendant city relied upon a city ordinance providing that "no money shall be drawn out of the city treasury except on the written order of the mayor addressed to the treasurer, and countersigned by the city clerk." There was no statutory provision corresponding to this ordinance, the latter therefore being a mere regulation by the city of its own affairs. The court said, " * * * unless there is a statutory requirement of that nature, we never have understood that any innocent holder of negotiable paper of any municipality is required to assure himself that a warrant has issued in accordance with such provision * * *." This would seem to be a wise and just limitation on the burdens of such innocent holders.

P. J. D.

PLEADING—ACTIONS FOR DEATH OF MINOR CHILD—DAMAGES—Action to recover for loss of services and funeral expenses, occasioned by the death of the appellant's minor son, alleged to have been caused by the negligence of the appellee. The jury returned a verdict in favor of the plaintiff and assessed damages to the amount of $1. The appellant in his appeal contended that the damages were two small to be sustained by the evidence, and based his appeal on clause *5, Sec. 610—Burns 1926,* which allows a new trial in cases of "error in assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property". The appellee contended that a new trial was barred by *Sec. 611—Burns 1926,* which provides that "a new trial may not be granted on account of the smallness of the damages in actions for injury to the person or reputation, * * *". *Held,* the action is based on an injury to a property right. Damages erroneous.[1]

The doctrine that there are two causes of action in cases of injury or death of a minor child, one in favor of the child or his representative and the other by the parent of the child, has been recognized under both the common law and under the statutes. This is now well established doctrine in Indiana,[2] and is widely accepted in the majority of other states.[3]

The child's or representative's action is based upon the injuries personal to the child, such as pain, suffering, permanent injury and impairment

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[13] 169 Fed. 766 (1909).

[1] *Thompson v. Fort Branch,* Supreme Court of Indiana, Nov. 20, 1931, 178 N. E. 440.

[2] *Long v. Morrison,* (1860) 14 Ind. 595, 77 Am. Dec. 72; *Rogers v. Smith,* (1861) 17 Ind. 323, 79 Am. Dec. 483; *Ohio & Mississippi R. R. Co. v. Tindall,* (1859) 13 Ind. 366, 74 Am. Dec. 259; *Pennsylvania Co. v. Lilly,* (1881) 73 Ind. 252; *Pittsburgh, etc. Ry. Co. v. Vining's Admr.,* (1867) 27 Ind. 513, 92 Am. Dec. 269; *Louisville, etc. Ry. Co. v. Goodykoontz,* (1888) 119 Ind. 111, 21 N. E. 472; *Mayhew v. Burns,* (1885) 103 Ind. 328, 2 N. E. 793; *Public Utilities Co. v. Whitehead,* (1921) 78 Ind. App. 85, 134 N. E. 894; *Boyd v. Blaisdell,* (1860) 15 Ind. 73.

[3] *Tidd v. Skinner,* (1919) 225 N. Y. 422, 122 N. E. 247; *Cowden v. Wright,* (1841) 24 Wend. (N. Y.) 429, 35 Am. Dec. 633; *King v. Viscoloid,* (1914) 219 Mass. 420, 106 N. E. 988; *McGreevey v. Boston Elev. Co.,* (1919) 232 Mass. 347, 122 N. E. 278; *McGarr v. Natl. and Providence Worsted Mills,* (1902) 24 R. I. 447, 53 Atl. 320; *Windle v. Davis,* (1922) 275 Pa. 23, 118 Atl. 503; *McClellan v. L. F. Dow Co.,* (1911) 114 Minn. 418, 131 N. W. 485; *Lascher v. Venus,* (1922) 177 Wis. 558, 188 N. W. 613; *Snyder v. Klink,* (1922) 273 Pa. 234, 116 Atl. 811; *Nolan v. Moore,* (1921) 81 Fla. 594, 88 So. 601; *Netherland v. Hollander,* (1894) 59 Fed. 417, 8 C. C. A. 169.